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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

In re T.H. et al., Persons Coming Under the
Juvenile Court Law.

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

LETICIA P.,

Defendant and Appellant.

B247506

(Los Angeles County
Super. Ct. No. CK96397)

APPEAL from a judgment of the Superior Court of Los Angeles County, D. Zeke Zeidler, Judge. Affirmed in part, reversed in part, and remanded.

Amy Z. Tobin, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Timothy M. O’Crowley, Deputy County Counsel, for Plaintiff and Respondent.

Leticia P. (Mother) appeals from the juvenile court's orders at a jurisdiction and disposition hearing declaring her three children dependents of the court pursuant to Welfare and Institutions Code¹ section 300, subdivisions (b) and (j), removing them from Mother's custody, and terminating jurisdiction with an order granting sole legal and physical custody of the children to their respective fathers and monitored visitation to Mother. Mother argues that the evidence was insufficient to support the jurisdictional findings that her failure to provide the children with adequate care and supervision placed each of them at substantial risk of serious harm. Mother also asserts that the disposition order removing the two younger children, Isabella and Victoria, from her custody was not supported by sufficient evidence showing that there was a substantial danger to the children if they remained in Mother's home and no other reasonable means of protecting them from harm. We affirm the jurisdiction order as to all three children, but reverse the disposition order as to Isabella and Victoria and remand the matter to the juvenile court to conduct a new disposition hearing for the two younger children.

FACTUAL AND PROCEDURAL BACKGROUND

I. Child Welfare History

Mother has three daughters that are the subject of the current dependency petition: T.H. (born July 1995), Isabella P. (born April 2001), and Victoria P. (born January 2006). Mother's first husband, Ramon H., is the father of T.H. Following her parents' divorce, T.H. solely lived with Mother and had limited contact with her father. Mother's second husband, Javier P., is the father of Isabella and Victoria. During these dependency proceedings, Mother and Javier were involved in divorce proceedings in family law court where custody of their two children was a highly contested issue. While the divorce was

¹ All further statutory references are to the Welfare and Institutions Code.

pending, Isabella and Victoria primarily lived with Mother and visited their father every other weekend and every Wednesday.²

The family was the subject of several prior child welfare referrals between 2006 and 2011. The only substantiated referral occurred in November 2011 and was based on an allegation that Mother physically abused T.H. On that occasion, T.H. attempted to run away from home, and when officers responded to the scene, she told them that Mother had slapped her, pushed her to the ground, and pulled her hair. Later, T.H. admitted that she had exaggerated to the police and that Mother never pushed her or pulled her hair, but Mother did slap her once across the forehead. Mother denied any abuse. The allegation of physical abuse was deemed inconclusive; however, an allegation of caretaker incapacity as to T.H. was added and found to be substantiated. A voluntary family maintenance case for Mother and T.H. was open between March and August 2012, and Mother agreed to attend counseling and parenting classes.

II. Initiation of the Current Dependency Proceedings

The current matter came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) in November 2012 following a suicide attempt by then 17-year-old T.H. On October 25, 2012, Mother and T.H. had an argument about Mother not allowing T.H. to attend a school function. Later that night, T.H. attempted to hang herself in the home she shared with Mother and her half-sisters. According to T.H., she placed a belt around her neck and secured the belt to the top rail of her bedroom closet before being interrupted by Mother. According to Mother, she found T.H. sitting on the closet floor holding a belt in her hands. After Mother called 911, T.H. was transported to the hospital and placed on an involuntary psychiatric hold.

On October 31, 2012, T.H. was released from the hospital and returned home. That same night, while Isabella and Victoria were staying with their father and T.H. was

² Mother and Ramon also have an adult daughter, D.H. Neither Ramon nor Javier is an offending parent or a party to this appeal.

sitting outside visiting with a friend, Mother left the home to run errands and locked the front door. Shortly thereafter, Mother was cited for shoplifting at a retail store and was not released from custody until the following day. Because Mother locked the front door, T.H. could not get inside the home and had to be taken to her maternal grandmother's house for the night. Later that week, while at T.H.'s school, Mother and T.H. had an argument about T.H. wanting to visit her father. Mother told T.H. that she should go live with her father and threatened to lock T.H. out of the home. Mother caused a scene and school personnel had to ask her to leave the premises. Following that incident, Mother and Ramon agreed that T.H. would stay with him, but he instead left T.H. at her maternal grandmother's house without Mother's consent.

On November 2, 2012, the DCFS received an anonymous referral alleging that Mother was not caring for T.H. and was being emotionally abusive to all three children. The referral specifically alleged that Mother was addicted to prescription medications and drove the children while under the influence of medication; that Mother was verbally abusive to T.H. and frequently threatened to kick her out of the home; and that, following T.H.'s suicide attempt and release from the hospital, Mother told T.H. that she could only stay in the home one night and then had to find another place to live.

On November 5, 2012, the case social worker met with Mother, Isabella, and Victoria at Mother's home. Mother and the children lived in a modest two-bedroom apartment. The apartment was clean, well-furnished, and very comfortable and inviting. The children were also clean, appropriately dressed, and appeared to be comfortable in the home. Mother was very cooperative during the interview and did not appear to be under the influence of any drugs. Mother reported that, after T.H.'s release from the hospital, T.H. wanted to stay with a friend but Mother would not agree. T.H. became upset, refused to return home, and decided to stay with her father. Isabella, then 11 years old, related that Mother and T.H. argued a lot and that T.H. would initiate an argument whenever Mother refused to let her go out. Mother never hit T.H., but T.H. had threatened to hit Mother. As described by Isabella, T.H. caused a lot of drama in the home and Mother made it worse by placing too many restrictions on T.H., such as taking

her phone away for a week or not allowing her to go out for a month. Victoria, then six years old, stated that Mother and T.H. often yelled at one another and that T.H. would start the arguments and use bad words. Victoria once saw T.H. pull Mother's hair, but Mother did not respond physically. Neither Isabella nor Victoria reported any problems in their relationship with Mother.

The case social worker met with T.H. at her father's house. According to T.H., during the time that Mother was married to her stepfather, Javier, T.H. was very happy with her life. The family had money and lived in a nice house full of luxuries. T.H. thought of Javier as her father and had no need for a relationship with Ramon. After Mother and Javier separated, T.H. had to move with Mother into a small apartment and they began to have a lot of conflict. There were occasions when Mother locked T.H. out of the apartment and the police had to be called. At times, the arguments between Mother and T.H. became physical, including an incident in 2011 during which Mother cut T.H.'s lip with a set of keys and T.H. needed stitches. In October 2011, both Mother and T.H. were arrested after they were caught shoplifting together, which resulted in T.H. being placed on probation for petty theft. With respect to her recent suicide attempt, T.H. reported that she genuinely had wanted to take her life at that time and was not grateful that Mother had stopped her, but since receiving treatment in the hospital, she no longer felt suicidal. After T.H. was discharged from the hospital, Mother took her to her first after-care appointment, but did not schedule any follow-up appointments or make a plan for T.H. to continue with therapy. T.H. stated that she could no longer live with Mother and wanted to stay with her father.

During her interview with the case social worker, T.H. disclosed that Mother had abused prescription drugs in the past and that she believed Mother was now addicted to Xanax. In a follow-up meeting, the case social worker asked Mother about her drug use. Mother confirmed that she currently was taking prescription Ativan for stress and anxiety, but only as needed at night. She also explained that she had abused prescription pain medication four years earlier due to domestic violence with Javier, but had undergone treatment at that time. Mother previously had made statements to the effect

that she would commit suicide if she ever lost her two younger children. However, she denied any suicidal ideation, and insisted that such statements were made in frustration and never in front of the children. Mother admitted that she could not control T.H., was no longer capable of caring for her, and did not want T.H. living in Mother's home. Mother would not agree to T.H. staying at her maternal grandmother's house, which would have allowed T.H. to complete her senior year at her high school. Mother was agreeable, however, to T.H. staying with Ramon.

The case social worker spoke with Ramon and Javier about the allegations against Mother. Ramon indicated that he was willing to provide a home for T.H. and to ensure she was enrolled in therapy as soon as possible. He acknowledged that he had not been involved in T.H.'s life for many years, but he was committed to trying to help her. Javier told the case social worker that he was concerned about Isabella and Victoria being in Mother's care. He reported that Mother allowed the girls to do whatever they wanted, and as a result, Isabella was not doing well in school. Javier also stated that he was seeking full custody of the children in the pending family law case.

After conducting the initial interviews, the DCFS determined that T.H. should be detained from Mother to secure T.H.'s continued safety, but that Isabella and Victoria did not need to be detained and could remain in Mother's home. On November 7, 2012, the DCFS took T.H. into protective custody and placed her with Ramon.

III. Section 300 Petition

On November 13, 2012, the DCFS filed a dependency petition on behalf of all three children under section 300, subdivisions (b) and (j). Both counts in the petition were based on the following allegations: "The child, [T.H.], suffers from mental and emotional problems, including suicidal ideation and a suicide attempt, requiring hospitalization in a psychiatric facility on 10/25/12. The child's mother, Leticia [P.], is unable to provide the child with appropriate parental care and supervision. The child does not wish to reside in the mother's home. The mother's inability to provide the child with appropriate parental care and supervision endangers the child's physical health and

safety and places the child and the child's siblings . . . at substantial risk of physical harm and damage.” At the November 13, 2012 detention hearing, the juvenile court ordered that T.H. be detained from Mother and released to the custody of Ramon. Isabella and Victoria were not detained at that time. The court also ordered that all three children attend individual counseling. A contested jurisdiction and disposition hearing was scheduled for January 30, 2013.

IV. Jurisdiction/Disposition Report

For its December 13, 2012 Jurisdiction/Disposition Report, the DCFS interviewed various family members about the allegations in the petition. In her interview, Mother described T.H. as being her “golden child” until the divorce from Javier two years earlier. After the divorce, Javier made it clear to T.H. that she was not his daughter and he cut off all communication with her. As a result, T.H. felt abandoned by both Javier and Ramon, whom she rarely saw, and she became depressed. Mother had tried to provide T.H. with structure and to set boundaries, but T.H. would refuse to follow the rules and would respond by cursing and screaming at Mother in front of her sisters. At some point, the arguments became physical. Mother thought that T.H.'s suicide attempt was a cry for help, and that the treatment T.H. had received in the hospital did not help her. Mother did not wish to have T.H. back in her home and believed the problems with T.H. had hindered her ability to care for her other children. With T.H. gone, Mother was able to give Isabella and Victoria more time and attention. As described by Mother, “[i]t's been so peaceful since she has been gone. I love her but not here, not now.”

Mother admitted that, during her marriage to Javier, she became addicted to pain medication that had been prescribed for endometriosis. She voluntarily sought treatment at a drug rehabilitation program. Mother attributed her prior drug abuse to the difficulties in the marriage which included domestic violence perpetrated against her by Javier. Although Mother had two prior arrests for petty theft, she denied that she had committed any theft-related crimes. According to Mother, the 2011 theft charge stemmed from T.H. shoplifting at a store while in Mother's care, and the 2012 theft charge was untrue and

was being contested at trial. Mother acknowledged that there were problems with T.H., but stated that she was a good mother to all of her children.

In his interview, Javier stated that he had seen a pattern of inappropriate behavior by Mother and that she had created an unhealthy emotional environment for the children. According to Javier, he personally had witnessed Mother physically and verbally assault both T.H. and her older sister, D.H. When D.H. was a teenager, Mother forced her to leave the home on multiple occasions, and she once made D.H. “take the rap” when Mother was cited for driving without a license. Javier thought that Mother had taught the children how to lie and steal, which had led to T.H. trying to sneak out of the house at age 14 to go drinking. He also was concerned that Victoria had learned to take items from stores without paying for them. Javier acknowledged that T.H. had felt abandoned by him after the divorce, but explained that he had decided to break off any ties with T.H. because Mother would have made it difficult for her if T.H. had maintained a relationship with him. Javier related that Mother treated anyone who disagreed with her as an enemy, and as a result, she was estranged from the maternal grandmother and other family members. He further reported that Mother had a history of prescription drug abuse and had attended four drug rehabilitation programs in the past. Javier had observed Mother show signs of drug use while at basketball games. He also had been told by T.H. that Mother drove while under the influence of drugs. Javier believed that Mother still had a drug problem and that he could best care for the children.

Ramon likewise attributed T.H.’s mental health issues to Mother’s failure to appropriately parent her. Ramon believed that Mother had not provided T.H. with proper care because when T.H. came to stay with him, she complained of headaches, earaches, and poor vision, and needed to be taken to several medical appointments to treat those issues. Ramon had no idea that T.H. was having any problems until he was told that she had been hospitalized, and since that time, he had been doing his best to help her. Ramon blamed Mother for sabotaging his relationship with their two daughters and preventing him from being involved in their lives.

In her interview, T.H. described having a happy childhood. Before Mother began using drugs, she was attentive, energetic, and always made sure that the children were happy. In recent times, however, Mother was verbally abusive to T.H., cursing at her and calling her names such as “whore” and “fat.” Shortly before T.H.’s suicide attempt, Mother told T.H. that she “hoped she would get raped in foster care by a foster father.” Mother also frequently threatened to kick T.H. out of the home, and following the suicide attempt, Mother told T.H. that she could stay in the home one night and then had to find another place to live. T.H. admitted that she had been arrested for petty theft in 2011, but noted that both she and Mother were shoplifting at the time and Mother had asked T.H. to “take the rap” because she was a minor and her punishment would be less severe. She also noted that all of the stolen items in her bag were for Mother. T.H. stated that Mother still was using prescription medications and was often under the influence of drugs. T.H. felt happy and safe in her father’s care and did not want to have any visits with Mother. T.H. believed that Mother’s instability had caused the distress in her life and that she could now concentrate on her own life and future.

Both Isabella and Victoria were interviewed. Isabella stated that Mother and T.H. would fight whenever Mother said no to her and that their home life was better since T.H. left. Victoria shared that both Mother and T.H. would yell and use bad words when they were upset, which sometimes scared her. In describing Mother, Isabella said that Mother was nice and tried to take her places. However, she also reported that Mother “gets angry and when she does, she used bad words. Sometimes she overreacts. I try not to get her too mad. She gets too angry.” In describing Javier, Isabella said that her father had a nice house, took her horseback riding, and gave her a laptop. Isabella felt safe and secure with her father, but noted that he worked a lot and did not have time for her. She related that she would rather be with Mother most of the time. Both girls stated that they felt safe in Mother’s home and were happy to be with her.

The DCFS also interviewed the maternal grandmother who explained that she currently was estranged from Mother, but still believed that Mother was a good parent. She described T.H. as a sensitive girl with a good heart who was suffering a lot.

According to the maternal grandmother, the problems between Mother and T.H. arose when Mother began abusing medications. Although Mother had attended a drug rehabilitation program, nothing was resolved because she returned home right away to be with her children. The maternal grandmother was concerned that Mother was still abusing medications because Mother was overwhelmed by the custody dispute and her financial situation. In the past, Mother had shown her love for the children by buying them things, but since the divorce, she had been struggling financially. Javier was fighting for full custody of Isabella and Victoria, and he was trying to use the maternal grandmother against Mother. The maternal grandmother did not believe that Isabella and Victoria were in any danger in Mother's care.

The DCFS spoke with T.H.'s case manager and probation officer. The case manager indicated that Mother and T.H. had a painful history and they needed individual and family therapy. T.H. felt abandoned by her biological father and her stepfather, and as a result, she had a lot of resentment. The case manager thought that Mother had been appropriate in parenting T.H. with consequences, but because T.H. was a very social girl, it was difficult for her to not attend school functions as a consequence for bad behaviors. The probation officer reported that T.H. had not complied with the conditions of her probation, and that he would recommend a residential placement for T.H. unless she showed improvement in her father's home. He described the family as a "wreck" and a "nightmare," and related that Mother could not handle T.H. because T.H. had no respect for Mother. He did not believe that Mother was a credible witness.

The Jurisdiction/Disposition Report contained additional information about Isabella and Victoria. At the time of the report, Mother and Javier had joint custody of the children. According to Javier, he had primary custody at one point but had allowed the children to stay with Mother because Victoria had been inconsolable about being separated from her. The children previously were attending individual counseling with a safe harbor therapist, but Javier reported that Mother did not continue with their therapy. With respect to their education, Isabella generally had poor grades and was at risk of failing certain classes, and Victoria had issues with excessive tardiness during the prior

academic year. However, Mother appeared to be doing a better job helping the children and Javier also had been proactive in correcting their academic issues. The DCFS noted that Mother and Javier were involved in a difficult divorce. There was a history of domestic violence in the marriage with both Mother and Javier accusing the other of being the perpetrator, and Javier had a prior arrest for domestic violence against Mother. The DCFS also had received a letter from Victoria's t-ball coach relating that Mother once called Javier an "asshole" in front of Victoria and the rest of her team. Both Mother and Javier reported that they currently had restraining orders against one another.

In its Jurisdiction/Disposition Report, the DCFS recommended that all three children be declared dependents of the juvenile court and that T.H. be removed from Mother's custody. The agency also requested that Mother receive family reunification services for T.H., and that Mother and Javier receive family maintenance services for Isabella and Victoria. Because family members were concerned that Mother might be abusing prescription drugs again, the DCFS recommended that Mother participate in random drug and alcohol testing and complete a substance abuse treatment program if she failed any test. The agency further recommended that Mother attend individual and anger management counseling, complete a parenting course, and undergo a psychiatric evaluation. The DCFS also proposed that all three children attend individual counseling, and when appropriate, conjoint counseling with their parents.

V. Supplemental Reports

For the jurisdiction and disposition hearing, the DCFS and the Los Angeles County Probation Department jointly prepared a section 241.1 report concerning T.H. According to the report, T.H. was arrested in October 2011 for petty theft after she and Mother were caught shoplifting at a department store. On that occasion, Mother and T.H. were captured on video surveillance grabbing various items of merchandise, entering a fitting room, and eventually leaving the store without paying for several concealed items. In June 2012, the juvenile delinquency court placed T.H. on informal probation. The probation department reported that T.H. and Mother had failed to fully comply with the

delinquency court's orders, including an order requiring Mother to complete a parenting education course. The report stated that T.H. was at great risk in Mother's care due to the child's recent suicide attempt, and that both Mother and T.H. were unwilling for T.H. to continue residing in Mother's home. The report also noted that T.H. appeared to get along with her father, stepmother, stepfather, sisters, extended family members, friends, and school staff. T.H. had expressed that she was doing well in her father's home and was not experiencing the emotional stress that she felt when she lived with Mother. The joint recommendation was that T.H. remain on informal probation pursuant to section 654.2 with the DCFS acting as the lead agency in the case.

In a last minute information report dated January 30, 2013, the DCFS noted that it continued to have concerns about Mother. As of that date, Isabella and Victoria had not been reenrolled in counseling. Mother disapproved of their prior therapist, but she had not proposed any alternative therapists as requested by the family law court. Mother also had not provided the DCFS with any character references or documentation regarding her past participation in counseling or parenting education. Mother told the DCFS that she previously had completed a year-long parenting course and was not attending individual counseling because she lacked insurance. Although the DCFS had given her a referral for a parenting education class, Mother had not yet enrolled. Javier had completed a one-day parenting class and was willing to attend additional classes. He told the DCFS that he still had concerns about Mother and that the school situation with Isabella and Victoria had not improved because Mother was taking them to school late. The DCFS recently had received another referral concerning Mother which alleged that she was driving under the influence and being verbally abusive to Isabella and Victoria. The agency stated in its report that Mother had not demonstrated a commitment to providing a safe and stable home for her daughters, and it continued to recommend that Mother and Javier receive family maintenance services to help support the children.

VI. Jurisdiction and Disposition Hearing

At the January 30, 2013 jurisdiction and disposition hearing, Mother, Javier, and Isabella each testified. In his testimony, Javier stated that he believed Mother was not capable of providing the children with appropriate care and supervision. Javier based his opinion on the times he personally observed Mother verbally and physically abuse T.H. T.H. also had told Javier that Mother was abusing medication and was driving while under the influence of medication. Javier believed that Isabella and Victoria were at risk of harm because Mother had shown a pattern of being unable control her anger with both D.H. and T.H., which was likely to continue with her younger children. Javier had custody of Isabella and Victoria every Wednesday and every other weekend. Isabella was close to failing two classes due to missing assignments and excessive absences and tardiness. Javier tried to help Isabella with her missing assignments, but he had only limited time with her and she often made excuses about not having her books. Isabella and Victoria had stopped attending counseling in September 2012 because Mother had requested that their therapist be replaced, but she still had not proposed any alternative therapists as ordered by the family court. Javier had never observed any physical marks or bruises on the children and he acknowledged that Mother was able to provide them with food and shelter. He also admitted that the children told him that they enjoyed living with Mother.

Mother testified that T.H. suffered from mental and emotional problems, but that she believed T.H.'s suicide attempt was more a cry for help than an actual attempt to take her own life. Although Mother tried to provide T.H. with parental care and supervision, she had no control over T.H.'s behavior because T.H. did not listen to her at all. Mother attributed T.H.'s problems to her abandonment by both Ramon and Javier. She noted that T.H. always had considered Javier to be her father, but a week after Javier and Mother separated, he told T.H. that Mother had made her decision and T.H. was not his daughter. Mother believed that there was a significant difference in her ability to parent her two younger children. In November 2012, Mother completed a one-year parenting class which taught her a lot about how to deal with Isabella. Isabella's grades had

dropped because she was being bullied in school. Because Mother and Isabella had a good communication system in place, Mother learned about the bullying and made a plan to address it. As a result, Isabella's grades were improving. With respect to the children's counseling, Mother testified that their prior therapist improperly had disclosed the children's statements in connection with a psychological evaluation in the divorce case, and the family law judge had agreed that a new therapist should be found. Mother had provided a list of proposed therapists to her divorce attorney and was willing to have the children continue with counseling. Mother also was willing to attend counseling and to cooperate with the DCFS in any court-ordered services.

Mother further testified that she did not wish to have T.H. back in her home. She acknowledged that Isabella and Victoria had witnessed some of her arguments with T.H., but maintained that there was only one time when an argument became physical. On that occasion, T.H. spat on Mother and Mother responded by walking out of the room. Mother stated that she also locked T.H. out of the home once because T.H. was abusing drugs, and she had to call the police to the home other times when T.H. threatened to leave. Mother admitted that she was cited for stealing an ice cream from a store on the same night that T.H. was discharged from the hospital. However, she denied that she was arrested or taken into custody. Mother currently took Motrin and occasionally Tylenol with Codeine for endometriosis, and she had a problem with prescription medication three years earlier. She sought treatment for her drug problem on three occasions and successfully completed a drug rehabilitation program once. Mother testified that she took a lot of responsibility for T.H.'s mental health issues because she realized that she spoiled T.H. during the marriage to Javier and that T.H. was not prepared for the lifestyle change that occurred following the divorce.

In her testimony, Isabella stated that she lived with Mother most of the time. If Isabella could choose, she would like to continue living with Mother and visiting her father every Wednesday and every other weekend. Mother allowed Isabella to ride her bike after school and Mother and the girls had a movie night at home every Friday. Mother made sure that Isabella and Victoria started their homework by 6:00 p.m. each

evening, and she always checked their work. Isabella felt that she and Mother were closely bonded and that she could talk to Mother about anything. In the past, Mother would get mad at Isabella for minor things, but in recent times, Mother would not get mad unless Isabella did something really wrong. When Mother was mad at Isabella, she initially would raise her voice, but then would calm down and would discipline Isabella by sending her to her room. Isabella felt safe in Mother's home.

At the close of the evidence, Mother's counsel argued that the section 300 petition should be dismissed for Isabella and Victoria because their situation was very different from that of T.H. Mother's counsel noted that Isabella and Victoria were much younger than T.H., and that Mother was more mature now than when she was raising T.H. and D.H. Mother's counsel also reasoned that any risk that Isabella and Victoria might face similar problems with Mother in their teenage years could be mitigated by court-ordered services for Mother and the children at this early stage. The DCFS and counsel for the children argued that the petition should be sustained for all three children. The juvenile court sustained the section 300 petition as alleged, and found that jurisdiction was proper as to all three children under section 300, subdivision (b), and as to Isabella and Victoria under section 300, subdivision (j).

With respect to the disposition for T.H., counsel for Ramon and counsel for T.H. joined in requesting that the juvenile court terminate jurisdiction with an order granting Ramon sole legal and physical custody of T.H. It was noted that T.H. was 17 years old and was doing well in Ramon's home, and neither T.H. nor Mother wanted T.H. returned to Mother's care. Mother's counsel submitted on the recommendation that T.H. be placed in Ramon's sole custody with an order terminating jurisdiction.

With respect to the disposition for Isabella and Victoria, counsel for Javier asked that the juvenile court grant Javier sole legal and physical custody of the children with monitored visitation for Mother. Counsel for Mother requested that the children remain in the custody of both parents. Mother's counsel acknowledged that there were some problems in the home, but argued that they did not constitute a present risk of harm to the children and that any risk of future harm could be controlled through court involvement

and in-home services. Counsel for the DCFS stated that the agency was recommending a home-of-parents order, but that it remained very concerned about Mother. Counsel noted that Mother was not currently attending any programs and had not yet shown through drug testing that her substance abuse problem had been resolved. Because the DCFS was concerned that Mother might still be abusing prescription drugs, it recommended random drug testing for Mother in addition to other services. Counsel for Isabella and Victoria asked the court to follow the DCFS's recommendation that the children remain in the home of their parents under the current custody and visitation schedule.

The juvenile court observed that it was a "difficult case because it really came into the system because of [T.H.'s] issues, but what we ended up getting in our laps was a protracted family law battle regarding [Isabella and Victoria]." The court also noted that the family law court appeared to have "its thumb carefully on the case and was carefully guiding it along." The court then stated that it had serious concerns about Mother's ability to properly care for the children given her substance abuse history which appeared to be unresolved, her anger management issues which had been directed at the children and Javier, and her poor judgment in parenting and supervising T.H.

The juvenile court declared all three children dependents of the court pursuant to section 300, subdivisions (b) and (j), and ordered that each of the children be removed from Mother's custody and placed in the homes of their respective fathers. The court also terminated jurisdiction over each of the children and issued exit orders concerning custody and visitation. As to T.H., the court granted Ramon sole legal and physical custody of T.H. and ordered monitored visitation for Mother with T.H.'s consent. As to Isabella and Victoria, the court granted Javier sole legal and physical custody of both children and ordered weekly monitored visitation for Mother. The court also ordered that each of the children attend individual counseling and that Javier participate in a parenting education program.

The court stated that the reason Mother was not granted reunification services was because the children were safely in the care of their respective fathers. The court also stated that the reason why Mother's visits were to be monitored was because she needed

to make substantial progress in parenting education regarding adolescents, individual counseling with a licensed therapist to address anger and conflict management issues, a mental health assessment, weekly random drug and alcohol testing, and conjoint counseling with the children. On February 8, 2013, Mother filed a notice of appeal from all of the juvenile court's findings and orders at the jurisdiction and disposition hearing.

DISCUSSION

I. Jurisdiction Order

The juvenile court found that dependency jurisdiction was proper as to T.H. under section 300, subdivision (b), and as to Isabella and Victoria under section 300, subdivisions (b) and (j). On appeal, Mother challenges the sufficiency of the evidence supporting the court's jurisdictional findings as to all three children. Mother specifically contends that there was insufficient evidence to support a finding (1) that she failed to adequately supervise or protect the children, and (2) that any prior conduct by Mother placed the children at substantial risk of serious physical harm in the future.³

A. Applicable Law

We review a juvenile court's jurisdictional findings for substantial evidence. (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1433; *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.) Substantial evidence is "evidence that is reasonable, credible, and of solid value." (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1401.) Under this standard of review, we examine the whole record in a light most favorable to the findings and conclusions of the

³ During the pendency of this appeal, T.H. turned 18 years of age. Although the juvenile court may retain jurisdiction over a dependent child until he or she reaches 21 years of age (§§ 303, 391), the court in this case terminated jurisdiction over T.H. and issued an exit order granting T.H.'s father sole legal and physical custody. Mother does not challenge the order terminating jurisdiction over T.H. on appeal, and thus, Mother's appeal from the order asserting jurisdiction over T.H. under section 300, subdivision (b) is technically moot. However, because the juvenile court's jurisdictional findings as to Isabella and Victoria were based on Mother's neglect of T.H., we consider the sufficiency of the evidence supporting the jurisdictional findings as to all three children.

juvenile court and defer to the lower court on issues of credibility of the evidence and witnesses. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393; *In re Tania S.* (1992) 5 Cal.App.4th 728, 733.) We determine only whether there is any substantial evidence, contradicted or uncontradicted, that supports the juvenile court's order, resolving all conflicts in support of the determination and indulging all legitimate inferences to uphold the lower court's ruling. (*In re John V.* (1992) 5 Cal.App.4th 1201, 1212; *In re Katrina C.* (1988) 201 Cal.App.3d 540, 547.) If there is substantial evidence to support the juvenile court's order, we must uphold the order even if other evidence supports a contrary conclusion. (*In re Megan S.* (2002) 104 Cal.App.4th 247, 251.)

Section 300, subdivision (b) provides that a child comes within the jurisdiction of the juvenile court if "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, . . . or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse." "The three elements for a section 300, subdivision (b) finding are: '(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) "serious physical harm or illness" to the [child], or a "substantial risk" of such harm or illness.' [Citation.] The third element . . . effectively requires a showing that at the time of the jurisdictional hearing the child is at substantial risk of serious physical harm in the future. . . . [Citations.]" (*In re Savannah M.*, *supra*, 131 Cal.App.4th at pp. 1395-1396.)

"Although evidence of past conduct may be probative of current conditions, the court must determine 'whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm.' [Citations.] . . . There must be some reason beyond mere speculation to believe the alleged conduct will recur. [Citation.]" (*In re James R.* (2009) 176 Cal.App.4th 129, 135-136.)

Section 300, subdivision (j) states that a child comes within the jurisdiction of the juvenile court if "the child's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be

abused or neglected, as defined in those subdivisions.” A finding under “section 300, subdivision (j) has two elements: first, that the [child’s] sibling has been abused or neglected, and second, that there is a substantial risk that the [child] will be abused or neglected.” (*In re Ashley B.* (2011) 202 Cal.App.4th 968, 981.) In determining whether there is a substantial risk to a child’s sibling, the juvenile court must “consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative. . . .” (§ 300, subd. (j).)

B. Jurisdictional Finding as to T.H.

The juvenile court found that T.H. was a person described by section 300, subdivision (b) because Mother’s failure to adequately supervise and protect T.H. placed the child at substantial risk of serious physical harm. We conclude that the evidence was sufficient to support the juvenile court’s exercise of jurisdiction over T.H.

Although Mother acknowledges that she and T.H. had a very troubled relationship, she argues that jurisdiction was not proper because T.H.’s suicidal thoughts and behavior were not the result of any abuse or neglect by Mother. There was ample evidence, however, that Mother engaged in a course of abusive and neglectful conduct toward T.H. which placed T.H. at substantial risk of harm. In her interviews with the DCFS, T.H. reported that Mother often was verbally abusive to her. Mother cursed at T.H., called her names such as “whore” and “fat,” and told T.H. that she “hoped she would get raped in foster care.” In addition, T.H. disclosed to the DCFS that Mother frequently threatened to exclude her from the family’s home, and Mother admitted to the juvenile court that she once locked T.H. out of the home because of her bad behavior. There was also evidence that the arguments between Mother and T.H. at times escalated into physical abuse, including two incidents in 2011 where Mother slapped T.H. across the face and struck her lip with a set of keys. On another occasion in 2011, Mother and T.H. went shoplifting together, and upon being caught, Mother asked T.H. to “take the rap” because T.H. was a minor and would face a lesser punishment.

Mother asserts that many of incidents of abuse and neglect alleged by T.H. occurred more than a year before the dependency proceedings were initiated, and thus, failed to show any current risk of harm. However, there was substantial evidence that, as of the jurisdiction hearing, T.H. remained at risk of serious physical harm if returned to Mother's home because Mother had shown an inability to provide T.H. with adequate care and supervision. In particular, T.H. reported that, following her suicide attempt and release from the hospital, Mother told T.H. that she could only stay in the home one more night and then had to find another place to live. That same night, Mother left the home and locked the door behind her while T.H. was sitting outside with a friend. Mother was then cited for shoplifting and taken into custody, leaving T.H. without access to the home for the rest of the night. Additionally, although Mother took T.H. to her first after-care appointment following her discharge from the hospital, Mother failed to schedule any follow-up appointments or otherwise make a plan for T.H. to continue with therapy. Mother herself admitted that she was no longer capable of caring for T.H. and did not want T.H. living in her home.

Mother claims that the reason she and T.H. had such a contentious relationship was because T.H. was a troubled teenager who did not respect Mother and refused to follow her rules. Mother notes that both Isabella and Victoria confirmed that T.H. instigated the arguments with Mother whenever she did not get her way, cursed at Mother and called her names, and cause a lot of drama in the home. While there certainly was evidence that T.H.'s oppositional behavior contributed to the conflict in the home, it was Mother's responsibility as the parent in the home to respond to T.H.'s unruly conduct in an appropriate manner. Mother repeatedly failed to do so, and instead responded to T.H.'s behavioral issues in a manner that was neglectful and at times abusive, and which ultimately led to an unsafe living environment for T.H. Under these circumstances, the juvenile court's finding that T.H. came within the jurisdiction of the court under section 300, subdivision (b) was supported by substantial evidence.

C. Jurisdictional Findings as to Isabella and Victoria

The juvenile court found that Isabella and Victoria were subject to the jurisdiction of the court under section 300, subdivisions (b) and (j). We conclude that there was substantial evidence to support the juvenile court's exercise of jurisdiction over Isabella and Victoria under section 300, subdivision (j) because Mother's neglectful conduct toward T.H. placed the younger children at substantial risk of suffering similar neglect.⁴

As discussed above, there was ample evidence that T.H. had been neglected by Mother within the meaning of section 300, subdivision (b). Mother nevertheless contends that, even if jurisdiction was proper as to T.H., any failure by Mother to provide T.H. with appropriate parental care did not create a substantial risk of harm to either Isabella or Victoria. However, based on the evidence presented at the jurisdiction hearing, the juvenile court reasonably could have found that Mother's failure to properly supervise and protect T.H. was part of a pattern of conduct by Mother with respect to her teenage daughters. The DCFS reported that Mother also had a troubled relationship with her eldest daughter, D.H., when D.H. was a teenager. During D.H.'s teenage years, Mother forced her to leave the family home on multiple occasions, and at one point, D.H. moved out of the home and went to live with her father. Javier told the DCFS that he had witnessed Mother physically and verbally abuse both D.H. and T.H. Javier further testified that Mother had shown a pattern of being unable to control her anger with D.H. and T.H., and that he believed such pattern was likely to continue with the two younger children.

There was also evidence before the juvenile court that Mother had exhibited difficulty managing her anger in front of Isabella and Victoria. In describing Mother, 11-

⁴ A single jurisdictional finding is sufficient to sustain the juvenile court's exercise of jurisdiction over a child. (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451; *Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 72; *In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875-876.) In this case, because there was sufficient evidence to support the juvenile court's assertion of jurisdiction over Isabella and Victoria under section 300, subdivision (j), we need not consider whether jurisdiction was also proper under subdivision (b).

year-old Isabella told the DCFS that “[s]ometimes she overreacts” and “gets too angry,” and that Isabella would “try not to get her too mad.” Six-year-old Victoria expressed that she would “get scared sometimes” when Mother and T.H. yelled at each other and used “bad words.” The children’s youth league coach reported that, during a t-ball game, Mother became frustrated with Javier and called him an “asshole” in front of Victoria and the rest of her team. Considering the totality of the evidence, the juvenile court reasonably could conclude that Isabella and Victoria were at substantial risk of being neglected by Mother in a manner similar to T.H., particularly as the girls became older and their behavior likely became more difficult for Mother to manage. The juvenile court’s finding that Isabella and Victoria came within the jurisdiction of the court under section 300, subdivision (j) was supported by substantial evidence.

II. Disposition Order

On appeal, Mother also challenges the portion of the juvenile court’s disposition order removing Isabella and Victoria from Mother’s care and custody and placing the children in the home of Javier with monitored visitation for Mother. Mother argues that the evidence was insufficient to support a finding that (1) the children would be at substantial risk of harm if allowed to remain in her home, and (2) there were no reasonable means of protecting the children other than removal from her custody.⁵

A. Applicable Law

Section 361, subdivision (c) permits the removal of a child from the custody of his or her parent if the juvenile court finds by clear and convincing evidence that “[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being” of the child if he or she were returned home, and “there are no

⁵ In its respondent’s brief, the DCFS stated that it did not recommend the removal of Isabella and Victoria from Mother’s custody at the jurisdiction and disposition hearing, and as a result, it declined to address the merits of this issue on appeal. Neither Javier nor counsel for Isabella and Victoria filed an appellate brief concerning the disposition order.

reasonable means by which the [child]’s physical health can be protected without removing” the child from the parent’s custody. (§ 361, subd. (c)(1).)

“The elevated burden of proof for removal from the home at the disposition stage reflects the Legislature’s recognition of the rights of parents to the care, custody and management of their children, and further reflects an effort to keep children in their homes where it is safe to do so. [Citations.] By requiring clear and convincing evidence of the risk of substantial harm to the child if returned home and the lack of reasonable means short of removal to protect the child’s safety, section 361, subdivision (c) demonstrates the ‘bias of the controlling statute is on family preservation, not removal.’ [Citation.] Removal ‘is a last resort, to be considered only when the child would be in danger if allowed to reside with the parent.’ [Citation.]” (*In re Hailey T.* (2012) 212 Cal.App.4th 139, 146; see also *In re Henry V.* (2004) 119 Cal.App.4th 522, 525 “[t]he high standard of proof by which [a removal] finding must be made is an essential aspect of the presumptive, constitutional right of parents to care for their children”]; *In re Jasmine G.* (2000) 82 Cal.App.4th 282, 288 [section 361, subdivision (c) “embodies ‘an effort to shift the emphasis of the child dependency laws to maintaining children in their natural parent’s homes where it was safe to do so’”].) Where the juvenile court makes a dispositional finding by the elevated standard of clear and convincing evidence, the substantial evidence test remains the appropriate standard of review on appeal. (*In re Hailey T.*, *supra*, at p. 146; *In re Henry V.*, *supra*, at p. 529.)

B. Order Removing Isabella and Victoria from Mother’s Custody

At the jurisdiction and disposition hearing, Mother, the DCFS, and counsel for Isabella and Victoria each requested that the children remain in the home of their parents under the joint custody arrangement that had been in place pending the parents’ divorce. Javier was the only party who requested that Isabella and Victoria be removed from Mother’s home and that sole legal and physical custody of the children be granted to him. The juvenile court acknowledged that there was a “protracted family law battle” over custody of the children and that the family law court was “carefully guiding” that case

along. At the same time, however, the juvenile court found that there was clear and convincing evidence that the children would be at substantial risk of harm if they remained in Mother's home and that removal from her custody was the only reasonable means of protecting them. Based on a careful review of all of the evidence presented at the hearing, we conclude that the juvenile court's removal order for Isabella and Victoria was not supported by substantial evidence.

There was no evidence that Isabella or Victoria had ever been physically or verbally abused by Mother. Although Mother's failure to provide appropriate parental care to T.H. placed the younger children at risk of future neglect, there was no evidence that Mother was neglecting Isabella or Victoria at the time of the disposition hearing or had ever done so in the past. Instead, the record reflects that both children were healthy and happy in Mother's home, felt safe when they were with her, and wanted to remain in her care. While Javier sought sole custody of the children at the disposition hearing, he admitted that he had never observed any signs of physical abuse in Isabella or Victoria and he had no concerns about Mother's ability to provide them with the basic necessities of life. He also acknowledged that the children had told him that they liked living with Mother. In fact, according to Javier, when he had primary custody of the children in the past, he allowed them to stay with Mother because Victoria had been inconsolable about being separated from her. In ordering the removal of Isabella and Victoria from Mother's custody, the juvenile court stated that it had serious concerns about Mother's ability to properly care for the children based on (1) her unresolved substance abuse history, (2) her anger management issues, and (3) her poor judgment in supervising and parenting T.H. However, even when considered in their totality, none of the areas of concern cited by the juvenile court supported a finding, by clear and convincing evidence, that there was a substantial danger to the children if they remained in Mother's care.

While it is undisputed that Mother had abused prescription medication in the past, the evidence that Mother had a current substance abuse problem that posed a substantial risk of harm to the children was vague and speculative. The maternal grandmother told the DCFS that she was concerned Mother was "taking too much medication," but she

provided no information about the basis for her belief or how Mother's medication usage affected her parenting, and she admitted that she did not have a current relationship with Mother. Javier reported that he had observed Mother under the influence of drugs at sporting events, but there was no indication as to when that occurred or if it was recent. The only other information that Javier shared about Mother's suspected drug use was that T.H. had said that Mother was abusing medication and driving under the influence of medication. In her interviews with the DCFS, T.H. made statements to the effect that she "believes [her] mother is now on [Xanax]," that "her mother uses medication and is frequently under the influence," and that she "thinks her mother is abusing medications." However, Mother herself admitted that she was taking prescription medications to treat certain medical conditions, and it is unclear from the record why T.H. believed Mother was abusing medications rather than taking them as prescribed. It is also unclear whether T.H. ever told anyone that Mother drove the children while under the influence of drugs. Although the DCFS did receive a referral that included that allegation, that referral was anonymous. Additionally, while the DCFS stated in one of its reports that "[t]here is a concern that mother may drive the children in that condition," it did not attribute that statement to T.H. or to anyone in particular.

The evidence that Mother had difficulty managing her anger around the children and had exhibited poor judgment in parenting T.H. also did not support a finding that Isabella and Victoria would be in substantial danger if allowed to remain in Mother's home. The juvenile court expressed concern that Mother's "anger management issues [were] directed both at the children and [at Javier]." ⁶ There was some evidence that Mother would get overly angry at Isabella, as reflected in the child's statements to the

⁶ With respect to Javier, the juvenile court noted that Javier had a restraining order against Mother. However, the record reflects that both Javier and Mother reported that they had restraining orders against one another, and Javier admitted to the DCFS that he had a prior arrest for domestic violence against Mother. In any event, there was no evidence that the parents' history of domestic violence during their marriage posed a current risk of harm to the children.

DCFS that Mother “gets too angry” and that Isabella tries “not to get her too mad.” At the disposition hearing, however, Isabella testified that, although Mother used to get mad at her for minor things, she no longer did so. Isabella also testified that, on the occasions when Mother did get upset at her for doing something very wrong, Mother would raise her voice at first but then would calm down and would send Isabella to her room. Although Mother’s prior neglect of T.H. placed Isabella and Victoria at risk of future neglect and thus supported the juvenile court’s exercise of jurisdiction over the younger children, such evidence was insufficient to warrant the drastic step of removing the children from Mother’s home. Both Mother and the children conveyed that it had been peaceful in the home since T.H.’s removal two and a half months earlier and the children maintained that they felt safe and secure in Mother’s care.

The evidence was also insufficient to support the juvenile court’s finding that there were no reasonable means of protecting the children other than removal from Mother’s custody. “[C]ourts have recognized that less drastic alternatives to removal may be available in a given case including returning a minor to parental custody under stringent conditions of supervision by the agency. . . .” (*In re Hailey T.*, *supra*, 212 Cal.App.4th at p. 148; see also *In re Henry V.*, *supra*, 119 Cal.App.4th at p. 529.) In this case, the DCFS recommended that Isabella and Victoria remain in Mother’s care subject to court-ordered services and continued supervision. The services proposed for Mother included random drug and alcohol testing, individual and anger management counseling, parenting education, and a psychological evaluation. The agency’s recommendation that Mother submit to random drug testing was a reasonable and well-balanced proposal given that some family members had expressed concern that Mother might be abusing prescription medications again, but without actual evidence of an ongoing substance abuse problem that posed a substantial risk of harm to the children. The other recommended services for Mother were appropriately tailored to address her failure to adequately supervise and protect T.H., and therefore, could mitigate the risk that Isabella and Victoria might suffer similar neglect by Mother in the future.

Although Mother and T.H. previously had received voluntary family maintenance services, the DCFS noted that the family's health insurance plan had made it difficult for them to get the services they needed at that time. Additionally, while the DCFS reported that it continued to have concerns about Mother, both the agency and the children's attorney believed that Isabella and Victoria could safely remain in Mother's home under court supervision. At the disposition hearing, Mother indicated a willingness to cooperate with the DCFS and to comply with any services ordered by the juvenile court. The juvenile court appeared to agree that Mother could benefit from the proposed services, but it nevertheless ordered that the children be removed from her custody and placed in the home of their father and that jurisdiction over the children be terminated. In making that order, the juvenile court never stated why it was rejecting the disposition plan recommended by both the DCFS and the children's attorney, nor did it address whether the proposed plan for court-ordered services and continued supervision of the family might be a reasonable alternative to removal of the children from Mother's custody.

Based on this record, there was no substantial evidence to support the juvenile court's findings that Isabella and Victoria would be in substantial danger if they remained in Mother's home and that removal from Mother's custody was the only reasonable means of protecting the children from harm. We accordingly reverse the disposition order pertaining to Isabella and Victoria and remand the matter to the juvenile court with directions to conduct a new disposition hearing for these two children. At the new hearing, the juvenile court shall consider whether, at this stage in the dependency proceedings, there would be a substantial danger to Isabella or Victoria if the children were returned to Mother's home, and if so, whether the DCFS's prior recommendation concerning placement and court-ordered services for the family would provide a reasonable means of protecting the children from the risk of harm.

DISPOSITION

The juvenile court's jurisdiction order as to all three children and the disposition order as to T.H. are affirmed. The juvenile court's disposition order as to Isabella and Victoria (1) removing them from Mother's care and custody, (2) placing them in the home of Javier, and (3) terminating jurisdiction over the children pursuant to a custody and visitation exit order is reversed and the matter is remanded to the juvenile court for further proceedings consistent with this opinion.

ZELON, J.

We concur:

PERLUSS, P. J.

WOODS, J.